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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Jane Doe #1; Jane Doe #2; Norlan Flores, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

Kirstjen M. Nielsen, Secretary, United States  
Department of Homeland Security, in her  
official capacity; Kevin K. McAleenan,  
Acting Commissioner, United States  
Customs & Border Protection, in his official  
capacity; Carla L. Provost, Acting Chief of  
the United States Border Patrol, in her  
official capacity; Rodolfo Karisch,  
Commander, Arizona Joint Field Command,  
and Chief Patrol Agent-Tucson Sector, in his  
official capacities,

Defendants.

Case No. 4:15-cv-00250-TUC-DCB

**PLAINTIFFS' SEPARATE  
STATEMENT OF UNDISPUTED  
MATERIAL FACTS IN SUPPORT  
OF MOTION FOR PARTIAL  
SUMMARY JUDGMENT  
REGARDING DEFENDANTS'  
OBLIGATION TO PROVIDE BEDS**

**CLASS ACTION**

**(Assigned to the  
Honorable David C. Bury)**

Action Filed: June 8, 2015

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*38(a)*

Pursuant to Local Rule Civil 56.1, Plaintiffs hereby submit this Separate Statement of Undisputed Material facts in support of their motion for partial summary judgment.

UMF NO.	UNDISPUTED MATERIAL FACT ("UMF")	SUPPORTING EVIDENCE
1	Tucson Sector Border Patrol Facility hold rooms have concrete floors and benches.	<p>Cortina Decl. Ex. 1, E. Vail Nov. 14, 2016 PI Hr'g Testimony at 39:9-41:3 ("The construction of most of the cells is concrete, concrete floors and concrete benches. If you sit on those for any -- I mean, literally it just takes a few minutes before you feel the body heat coming out of your body.")</p> <p>Cortina Decl. Ex. 9 at USA000091-92 (Department of Homeland Security standards requiring hold rooms be constructed with concrete or steel)</p> <p>Ullman Decl. Exs. 15-16 (photos of holding rooms with concrete floors and benches)</p> <p>Stenger Decl. Exs. 17-23 (photos of holding rooms with concrete floors and benches)</p>
2	Tucson Sector Border Patrol Facility hold rooms were not built for sleeping and do not have beds.	<p>Cortina Decl. Ex. 9 at USA000091 ("In general, all hold rooms must have the following requirements: . . . (d) No beds; a hold room is not designed for sleeping")</p> <p>Cortina Decl. Ex. 4, Defendants' Response to Plaintiffs' First Set of RFAs, Nos. 2-9 (admitting that Tucson stations do not have beds)</p> <p>Cortina Decl. Ex. 3, G. Allen Nov. 15, 2016 PI Hr'g Testimony at 58:5-6 ("Q: Are beds available at Tucson sector Border Patrol stations? A: Beds? No.")</p>

3	<p>Prior to the preliminary injunction, Defendants' practice was generally not to provide mats to detainees, except to juveniles and their parents.</p>	<p>Cortina Decl. Ex. 3, G. Allen Nov. 15, 2016 PI Hr'g Transcript at 60:8-22 ("A: So the use of mats is all children are given mats. . . . We also make an attempt to -- if it's a family group to give -- if it's a mother and children or a father and children, we make an attempt to give the adult and children each their individual mat, bedding, you know, blanket and mattress. . . . but, you know, it's at a request and availability, and per our policy it's not a required item for adults.")</p> <p>Cortina Decl. Ex. 14, TEDS Policy at USA000634 (provision of bedding to adults is optional)</p> <p>Cortina Decl. Ex. 2, G. Allen April 7, 2017 Dep. Testimony at 36:15-37:5 (testifying that the preliminary injunction order changed Defendants' policy regarding provision of mats), 174:19-176:9 ("You know, because I guaranty [sic] you three or four years ago we wouldn't have had enough mats or probably enough floor space probably in Tucson to put sleeping mats for everybody that we dealt with, just the sheer numbers.")</p> <p>Cortina Decl. Ex. 5, Defendants' Objections and Responses to Plaintiffs' RFAs, Set Two, No. 106 ("Defendants admit that some stations in April, 2016 had no mattresses available or had only a limited number of mattresses, but deny that detainees were not provided blankets.")</p>
4	<p>The majority of detainees are held in Defendants' holding facilities longer than 12 hours, and many are held for days.</p>	<p>Cortina Decl. Ex. 5 Defendants' Objections and Responses to Plaintiffs' RFAs, Set Two, Nos. 69-75</p> <p>Cortina Decl. Ex. 6, Tucson Sector</p>

		<p>e3DM data for the period Jan. 2015 through Feb. 2018</p> <p>Cortina Decl. Ex. 8, Expert Report of Michael Bandemer at 8-9 and Chart 1 (summarizing e3DM data)</p> <p>Cortina Decl. Ex. 7, Supplemental Expert Report of Michael Bandemer at 2 (summarizing e3DM data and demonstrating that 85.5% of detainees during the class period were detained longer than 12 hours), at Chart 3 (individuals detained during the class period for an average of 26 hours)</p> <p>Cortina Decl. Ex. 3, G. Allen Nov. 15, 2016 PI Hr'g Transcript at 38:11-39:21 ("You know, often times by the time we get someone to the station, we're approaching on 12 hours [of time in custody].")</p>
5	Class Members must place their sleeping mats on the ground.	<p>Cortina Decl. Ex. 10, G. Allen July 14, 2016 30(b)(6) Dep. at 39:6-21 ("Q: Typically a mattress goes on a bed though; is that right? [objection omitted] A: In a correctional facility, no. Q: So where does a mattress go if it doesn't go on a bed? A: It goes on the floor.")</p> <p>Ullman Decl. Exs. 15-16 (mats crammed together on the floor)</p> <p>Stenger Decl. Exs. 20-23 (mats crammed together on the floor)</p>

1 Dated: May 4, 2018

By: /s/ Colette Reiner Mayer  
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